

PLANNING DEPARTMENT

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RESOURCE MANAGEMENT AGENCY

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Community Development Program Department

Engineering & Survey Services Department

Environmental Health Services Department

Planning Department

Roads Department

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October 29, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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**RE: Notice of Proposed Rule Making
MM Docket 97-182
FCC Preemption of State and Local Ordinances
Siting of Commercial Broadcasting Facilities**

Dear FCC Commissioners and Staff:

The Kern County, California Planning Department has reviewed the above-referenced Notice of Proposed Rule Making pertaining to the possible preemption of state and local ordinances for the purpose of siting of digital television towers (DTV) and the necessary relocation of existing transmission facilities due to DTV installations. We have also read the briefing document prepared on October 20, 1997, by Henrico County, Virginia and this Department is in agreement with the objections and issues raised therein. Although the adopted construction schedule is an ambitious one, it is the opinion of this Department that the broadcasting industry can meet the prescribed time frames without the need for the Commission to preempt local zoning and building ordinances. The Commission should defer land use siting issue resolution to local governments who are most intimately familiar with local siting concerns and should consider the preemption of local regulations only when there is a compelling national interest to do so. Both Congress and the Courts have long recognized that zoning is an appropriate function of local government. Although compliance with local land use requirements adds some lead time to the site selection process, it need not result in significantly longer time periods to achieve on-air deadlines and the petitioner's proposed preemption rule appears to be an excessive response aimed at circumventing the uncertainties of local land use processes under the guise of trying to adhere to the adopted construction schedule.

A conditional use permit for a television or radio transmitter typically takes 60 to 90 days in Kern County. In cases where an environmental document is also required, the length of processing time could average five months. A significantly longer processing time period would be required in instances when an Environmental Impact Statement (or Environmental Impact Report under the California Environmental Quality Act) is required; however, such an environmental document is rarely required for communications tower facilities. Communications tower applications in Kern County rarely exceed 90 days in processing time.

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October 29, 1997

Page 2

This Department is far from convinced that any significant preemption of local land use authority is warranted to accommodate the adopted schedule for DTV facilities. If any such preemption is ultimately taken by the FCC, it is our hope that it would be very limited and very concise.

Perhaps the FCC could reserve the possibility for strengthening local preemption until a year or two has passed and it has a better understanding as to whether there are any actual impediments that might be created through the local land use approval process. The adoption of the FCC's construction schedule for DTV facility construction should be obtainable without any intervention in local land use authority if the broadcasting industry mounts a concerted effort to obtain local land use approvals in an expedient manner.

In the event the Commission does take action to preempt local and state regulations pertaining to the construction and siting of DTV facilities, this agency is of the opinion that a much more limited scope of preemption should be considered and that any such preemption be specifically limited to the construction of DTV facilities and the related relocation of existing transmission facilities. Rather than preempt local land use authority, it may be more appropriate for the FCC to seek a waiver of NEPA requirements.

The potential environmental effects from DTV installations typically center around three things: 1) aesthetics, 2) safety (airplane safety and risk of structural collapse) and 3) possible health impacts from RF emissions. Such facilities could also be exempted from the Federal Endangered Species Act, which could also significantly decrease development lead times. By leaving local (and state) discretionary permit processes intact but focusing on the elimination of the redundancy generated by a separate federally mandated environmental review, time frames may be shortened significantly. Often times, it's possible to exempt an application from local and state environmental review procedures. If there is no compliance necessary with environmental review requirements, a processing time period of 90 days from the time of acceptance of a complete application to a formal decision on the project would be reasonable in most instances.

The permitting process could potentially be expedited at the local government level by making such facilities subject to FAA review and clearance prior to submittal to the local agency.

We are in agreement with the Henrico County that the scope of administrative buildings for possible preemption needs to be thoroughly defined. There is no reason to exempt television broadcasting studios from local land use authority. Small buildings housing computer equipment installed near the base of a DTV tower should constitute the upper limit of any possible preemption.

October 29, 1997

Page 3


Local government is probably not the best level of government to address possible health and environmental impacts from RF emissions. While this agency supports a greater research effort to examine these possible impacts, such issues are best addressed at the federal or state level.

DTV towers, which could average 700 feet in height, are clearly incompatible uses with nearby residences or service commercial uses. Preemption of local zoning regulations should be viewed as the least desirable option to local governments. If the FCC ultimately decides that local zoning preemption is necessary, it might consider doing so only to replace existing towers in excess of 100 feet or in instances where there are no residences or commercial uses, or properties zoned or designated for such uses, within a mile of a proposed DTV site. Any type of preemption of local land use authority, however, is strongly discouraged.

The Planning Department strongly urges the Commission to deny this rule making proposal. Mandating arbitrary time limits for local governments to act on environmental, zoning, and building permit approvals for such towers is unnecessary and would interfere significantly with the due process objectives of local government. The Planning Department is further of the opinion that this proposal raises significant Constitutional issues and is inconsistent with Congressional intent and the principles of Federalism. This Department respectfully urges the Commission to terminate these proceedings and take no action to usurp local government entities.

Should you have any questions, please contact me at your convenience.

Very truly yours,


TED JAMES, AICP, Director
Planning Department

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cc: Each member of the Kern County Board of Supervisors
Senator Feinstein
Senator Boxer
Assemblyman Thomas
Assemblyman Dooley
National Association of Counties
CSAC
Resource Management Agency Director
Home Rule Coordinator